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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 216

THE PEOPLE OF PUERTO RICO,
ON BEHALF OF THE ISABELA IRRIGATION SERVICE,
Petitioner,

vs.

UNITED STATES OF AMERICA, et al [Individual landowners]
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

MANUEL RODRIGUEZ RAMOS,
Acting Attorney General of Puerto Rico,
Of Counsel.

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PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT, AND SUPPORTING BRIEF

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, The People of Puerto Rico, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals for the First Circuit (R. 58-68; 134 F. (2d) 267), entered in this cause on March 11, 1943 [rehearing denied April 13, 1943], affirming the judgment of the District Court of the United States for Puerto Rico in favor of the respondents which, in condemnation proceedings brought by the federal government, had denied compensation to the insular government for injuries to the use and value of its "Isabela Irrigation Service" as an integrated system, and for loss of revenue, consequent upon the United States taking over a portion of the lands in the irrigation

district, and taking over and destroying that part of the insular government's distribution ditches, etc., lying within the boundaries of the area so taken over. The revenue was part of a trust fund for the maintenance of the insular government's "Isabela Irrigation Service" and the amortization of its outstanding "Isabela" bonds for the payment of which the good faith of The People of Puerto Rico had been irrevocably pledged.

The District Court allowed the insular government the value of its directly owned tangible property actually taken,—that portion of its distribution equipment lying within the boundaries of the area taken over for the federal government's "Puerto Rican Air Base"—[viz., rights of way, irrigating ditches, electric power lines, canals, gates, pipes, flumes, etc.,—$64,393.07 for all these "Tangibles" (R. 38)];—but denied any compensation whatever for injury to the irrigation system, as an integrated whole, by thus breaking into and mutilating the irrigated district, and leaving the insular government, and the land owners remaining within the balance of the district, still liable to repay to the bond holders the entire cost of the upper works of the system for collecting and bringing down the waters—and the entire cost of their upkeep and operation,—[as well as for the balance of the distribution system remaining within the irrigated lands not taken],—despite those upper works being larger and costlier, both in original cost and in upkeep, than necessary or suitable for the thus reduced size of the irrigated district.

By order of MR. JUSTICE FRANKFURTER, June 30, 1943 (R. 69), the time within which to apply for a writ of certiorari in this case has been extended to and including July 31, 1943.

QUESTIONS PRESENTED

1. Is the insular government entitled to compensation for injuries inflicted upon it, as above indicated, by the impairment of the use, and thereby of the value and earning power, generally, of its "Isabela Irrigation Service" as an

integrated system, caused by the United States taking over for its "Puerto Rican Air Base" a portion of the lands in the irrigation district, and thus breaking into and mutilating the functioning of the Irrigation Service as a whole, —in addition to compensation for the actual cost value of that portion of its distribution equipment which had been located within the area taken over?

2. Or, on the other hand, is the insular government's right to compensation limited to receiving payment, solely, of the actual cost value [depreciated] of that part of its distribution equipment that had been so located within the area taken over, and has now been taken and destroyed by the federal government, in the taking over of those lands?

Petitioner, the insular government, believes that the first question should be answered in the affirmative; and the second question in the negative.

The Circuit Court of Appeals, however, affirming the District Court, holds the opposite.

3. What proportion of the amount of the insular government's injuries to the irrigation system as an integrated whole, or of the depreciation of the value and of the earning power of the whole system, should be charged against the awards to the individual land owners within the irrigated district taken over by the United States, in release or satisfaction of the liabilities of their lands for the payments of the assessments for the maintenance of the system and the amortization of the bonds?[1]

The District Court apparently thought this question a matter for future consideration,—"should properly be from the award of compensation for the lands" (R. 47), "If there existed any compensable interests in the lands because of being in the irrigation district".

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[1] Other subsidiary questions are indicated in the "Statement" and in the "Argument" in the Supporting Brief (*infra*, pp. 12-13). The questions here stated constitute the important and decisive issues in the case.

The Circuit Court of Appeals, while recognizing (R. 65) that the People of Puerto Rico

> "has not relinquished its claim of a lien upon the funds paid for the property under discussion which are undistributed and it may even now commence an action to satisfy its lien",

holds that The People of Puerto Rico did not have any "presently existing lien upon all the lands in the irrigation district for the purpose of collecting these special assessments" (R. 66) and apparently concludes,—although without expressly saying so,—that there was no liability against the lands which could be recognized as a basis for giving The People of Puerto Rico any portion of the awards to the landholders in the condemnation proceedings. [The record does not show the amounts of the landholders' awards, but it is stipulated (R. 55):

> "that the availability of irrigation for the lands previously taken had been considered as an element adding to their value, and that that element of value was included in the awards of compensation made in said judgment and decision"].

Apparently no reduction was made from the added value awarded to the lands for "the availability of irrigation", *on account of their liability to pay their shares* of the cost of building the irrigation system and of maintaining and operating it. Certainly no part of the added element of value for the "availability of irrigation" was subtracted from the awards to the landowners, nor allotted to The People of Puerto Rico in satisfaction of the release of the land from that liability.

As to this question the petitioner believes that the release of the lands from that liability for the repayment of their shares of the cost and of the maintenance and operation of the entire system, should have been taken into consideration by the District Court in making the awards; and that, after recognizing for the benefit of the individual land own-

ers the increased value of the lands by reason of the availability for irrigation which they enjoyed because of the construction and operation of the Isabela Irrigation System, *there should have been subtracted* from the amounts of such increased valuations, for each of the parcels of the land taken over within the district, the amounts of *the present value or present worth of their respective liabilities*[2] on this account; and that those subtracted amounts, for such liabilities respectively, should have been awarded to The People of Puerto Rico in payment, *pro tanto,* of compensation for the injury to the irrigation system as an integrated whole, and to aid, to that extent, in enabling it either to reduce proportionately its bonded indebtedness for the construction of the system or else to extend its distribution ditches and equipment over a countervailing area of lands available to be newly brought within its irrigated district and thus restore the normal functioning of the upper works of the district in accordance with the capacity for which they were built.

STATEMENT

The history of the Isabela Irrigation Service, and of the inception of this proceeding, is outlined in the District Court's opinion (R. 39-44), and in that of the Circuit Court of Appeals (R. 58-60; 134 F (2d) 267, 268). The latter court says (R. 58-60, *supra*):

> "MAHONEY, J. This is an appeal from an order of the District Court of the United States for Puerto Rico dismissing the claim made by the People of Puerto Rico on behalf of the Isabela Irrigation Service for additional compensation[2½] in proceedings instituted by the

---

[2] Voluntary assent of owners of at least 10,000 acres was a condition to the Isabela Irrigation Law going into effect in the first place. (Sec. 4, Act No. 63 of 1919; Appendix, *infra,* p. 62).

[2½] That is, for compensation for injury to the Isabela Irrigation System as an integrated whole, and for deprivation of revenue for the irrigation system, consequent upon the United States taking over a substantial part of the land in the irrigation district, in addition to the value [which the

United States to acquire land by condemnation for military purposes.

"The United States, on September 6, 1939, filed its petition and declaration of taking in the district court and deposited in the registry of the court certain sums of money as the estimated compensation for the condemned land. Included in the land described in the petition were 592 acres[3] located within the Isabela Irrigation Service.

"The Legislature of Puerto Rico in 1919 authorized the issuance and sale of bonds to secure funds for the construction and development of an irrigation system provided for by Act No. 63, called the Isabela Public Irrigation Law. The good faith of the People of Puerto Rico was pledged for the payment of the bonds and it was recited in Act No. 59, Section 8 (1919), that the revenues derived from assessments levied upon the lands included in the irrigation distrct were to be devoted to the payment of the interest and principal of the bonds. The proceeds of the sale of the bonds and all sums accrued by reason of assessments of taxes and sale of water and power within the irrigation district were to be deposited in the treasury of Puerto Rico in a trust fund to be known as the "Isabela Irrigation Fund." It was further provided that all expenditures for the construction and maintenance of the irrigation system were to be made therefrom. Each tract of land was liable under the Act only for its proportionate share of the assessments and the right to use the water from the system was made inalienably appurtenant to the land. Section 29 of the Public Irrigation Law provided that the amount assessed under the provisions of the Act for the different tracts comprising the permanent irrigation district should be a charge upon the lands in favor of The People of Puerto Rico and should constitute a lien upon the lands. The annual assessment was not to exceed $15 per acre. It was not until 1928 that the operation of the system was begun and

[3] And 703 acres more in the companion case of *Pedro Hernandez Almeida, et als.* (R. 50, 52, 56-"19").

District Court allowed] of the insular government's own tangible property taken over by the United States: "additional compensation" in that sense.

later in July, 1929, the Treasurer was authorized to issue additional bonds in the amount of $1,250,000 to pay for installments of principal and interest on the original bonds and the cost of operation and maintenance until the assessments on the land brought in sufficent funds for this purpose. Subsequently, the Legislature passed Act No. 70 (1934) authorizing the Treasurer to defer unpaid assessments up to June 30, 1934, and such deferred assessments were converted into a current debt of the landowner and the formerly existing liens for the payment of said assessments were extinguished. By Act No. 78 (1936), the Legislature of Puerto Rico suspended Section 29 of the Public Irrigation Law, as amended, until June 30, 1941, insofar as it referred to assessments, and in lieu of assessments, provided that the Treasurer levy a special tax of $1.00 per acre on the land in the district from July 1, 1936, to June 30, 1941. This Act also authorized the Commissioner of Interior to sell water at specified rates to the landowners whose land was in the irrigation district, if they had paid the special tax, and to sell water to land owners outside the irrigation district at slightly higher rates, without a payment of the special tax. Section 34 of Act 63, *supra*, which made the right to use the water inalienably appurtenant to the land in the irrigation district, was suspended. By Act No. 178 (1941), the Legislature of Puerto Rico continued the special tax of $1.00 per acre without allotment of any water, and continued the suspension of Sections 29, 33 and 34, of Act 69, *supra*, until June 30, 1951, and the provision for the sale of water to landowners whose land was not in the irrigation district was continued."

While the annual levying of the assessments under the original Acts was *suspended* by Section 1 of the Act of May 12, 1936, until June 30, 1941, and again *suspended* by Section 2 of the Act of May 14, 1941, until June 30, 1951 (Appendix *infra*, pp. 91-92, 98-99), yet there is nothing in either of those suspensions in any way releasing or changing the liability of the lands for the assessments, or the ministerial duty of the Treasurer to levy them again, beginning June 30, 1951, under the original Acts of 1919 and their subsequent modifications above noted; and, in the meantime, a like liability was

created by such Acts of 1936 and 1941 for the *interim* "special taxes" of $1.00 per acre to be levied during the suspensions, until June 30, 1951 (Acts of May 12, 1936, and May 14, 1941; Appendix *infra*, pp. 92, 99-100).

DISTRICT COURT'S OPINION

The District Court (R. 46-47, 49) thus rather too narrowly summarizes the claim of this petitioner, The People of Puerto Rico, as presented to that court:

> "As disclosed by the memorandum submitted by claimant in support of this claim, the following grounds are set forth:
>
> "1. Damages caused by the alleged severance or withdrawal of the 592 acres of land from the total land area within the irrigation district.
>
> "2. Damages caused by the alleged severance of that part of the distribution system located within the lands taken from the entire system. * * *
>
> " * * * The basis of this theory, as claimant states in its memorandum, is that the lands taken are no longer subject to the assessments provided for in the Isabela Public Irrigation Law, and that the lien on the land securing unpaid assessments has been lost" (pp. 46-47) * * * .
>
> "What claimant contends is that it has suffered damages because it has lost the revenue which it anticipated it would receive from the owners of the lands taken by sale of water, electric power, and by assessments" (R. 49);

and, viewing the insular government's claim in that aspect, the District Court denied it on the grounds that (R. 49):

> "Such a loss, if it exists, is like the loss of patronage by a telephone company when lands of its subscribers are condemned. And that is a type of consequential damage not compensable. (See *Deepe* v. *United States*, 103 Colo. 294, 86 Pac. (2d) 242). Insofar as loss of future assessments is concerned, the case is like the loss of bondholders upon condemnation by the United States of lands to which they looked for assessments to pay the bonds, which type of loss has been held to be non-compensable. (See *John K. and C. Mullen Benevolent Corp.* v. *United States*, 290 U. S. 89). Such dam-

ages are also held to be too speculative. They are really anticipated future profits from loss of business, and are clearly not compensable under the authorities. (See *Seaboard Airline R.* v. *United States,* 275 Fed. 77, app'd 262 U. S. 341[4])"

OPINION OF THE CIRCUIT COURT OF APPEALS

In the final pages of its opinion the Circuit Court of Appeals states its conclusions and decision (R. 65-68; 134 F. (2d) 267, 272-273) as follows:

"This issue turns upon a proper interpretation of the pertinent statutes dealing with the creation of the irrigation system, the issuance of the bonds in question, and the assessments of the special levies and taxes. Section 8 of Act No. 59, *supra,* provided that The People of Puerto Rico irrevocably pledged its good faith for the payment of the interest and principal of the bonds, and it further provided "the foregoing provisions regarding the payment of interest on the said bonds and the payment of principal, shall be deemed to be in the nature of a continuous appropriation and be sufficient authorization to the Treasurer of Porto Rico to make such payments, and no further appropriation for such purpose shall be required." Section 29 of the Public Irrigation Law provided that the Treasurer of Puerto Rico should calculate the amount of the interest and principal due upon the outstanding bonds for the ensuing fiscal year and the estimated amount for the cost of the operation and maintenance of the irrigation system, and after taking into consideration certain other sums which we need not discuss, the amount finally determined by him constituted the total sum to be assessed for the fiscal year and this sum was required to be levied upon the land included in the irrigation district. Section 29 further provided:

> 'Assessments under the foregoing provisions shall be made upon each particular tract of land in the proportion that the area of such tract of land bears to the whole number of acres included in the said permanent irrigation district. The amounts resulting from such computation . . . shall be ex-

[4] Erroneous citation; 261 U. S. 299, 304; but does not support District Court.

tended upon the taxroll for the different tracts at the time comprising the permanent irrigation district. The taxroll so extended shall be completed by the treasurer of Porto Rico on or before the first day of July of each year, and is hereby imposed as a charge upon the said lands (but not as a personal liability upon the owners thereof) in favor of the People of Porto Rico and shall constitute a tax the lien of which shall be superior and prior in law to any right, claim or lien of any other nature, save and except the general taxes of Porto Rico as provided by law, . . . '.

"It is the contention of the People of Puerto Rico that the duty of the Treasurer was a ministerial one and that under the provisions of the Act in question there was a continuing requirement that the land should be assessed for the payment of the interest and principal of the bonds and that, therefore, the People of Puerto Rico had a presently existing lien upon all the lands in the irrigation district for the purpose of collecting these special assessments. When the United States condemned these lands it destroyed this lien. With this contention we cannot agree. It may be admitted that the duties of the Treasurer were clearly prescribed by the various statutes and that, therefore, what was done by him was purely ministerial, but this does not change the nature of the assessments on the property in question. It is clear from a reading of the sections which we have set forth that the lands in question were to be annually assessed to meet the annual interest and principal payments of the bonds. Since the lien in favor of the People of Puerto Rico arose only after the Treasurer made his annual assessments, there was a presently existing lien only from such time until the tax was paid. Liens for taxes to be assessed in the future can at the most be potential rather than present liens and as such cannot be satisfied out of moneys paid into court under 40 U. S. C., § 258(a). *People of Puerto Rico* v. *United States*, 131 F. (2d) 151 (C. C. A. 1st, 1942). The People of Puerto Rico could have provided that the amounts required to pay the principal and interest on the bonds and the cost of maintaining and operating the irrigations system should constitute a

lien in its favor upon the property but this was not done. There is no justification for giving a liberal construction to statutory provisions creating a lien particularly when, as here, the statute is clear that the Legislature provided that the lien should cover only annual assessments. See 5 McQuillan, *supra,* § 2258, pp. 786, *et seq.*

"We think *Mullen Benevolent Corporation* v. *United States,* 290 U. S. 89, cited by the appellee, is in point and bears a close resemblance to the case at bar. In that case, an action was brought to recover a balance due on bonds issued by the City of American Falls, Idaho. The bonds were issued to finance the cost of constructing sidewalks and sewers in certain improvement districts, and special assessments were levied on the lands in the district in order to cover the payment of the principal and interest of the bonds. There was authority in case of a deficiency in the original assessments to reassess the property in the districts for the amount of the deficiency. By 1927 the United States had either purchased or condemned all the property in the districts. It was generally known by this time, however, that the original assessments were insufficient to pay the interest and the principal of the bonds. By ordinance enacted July 3, 1928, and proceedings pursuant to it, the city reassessed all the land within the districts. As the land was then owned by the United States the assessments were a nullity. The position taken by the bondholders in that case was that the bonds were property and, in the alternative, that they were liens actual or inchoate on the realty. Since a lien could not be foreclosed against lands owned by the United States, it was asserted that the respondent's acquisition of the land destroyed the value of the securities and gave rise to an implied promise to pay the remaining sums due the bondholders. The court held that the United States did not take the bonds nor did it in any way appropriate the right to make future assessments. As it said (pp. 94, 95): "By purchase of the lands the United States at most frustrated action by the City to replenish the assessment funds to which alone the bondholder can look for payment of his bonds, but this was not a taking of the bondholder's

property." At the time of condemnation in that case there was no presently existing lien upon the lands in question but there was a right to make future assessments at the time the property was condemned. We see no great difference in a right to make future assessments and a right to make a reassessment.

"The People of Puerto Rico seeks to distinguish *Mullen Benevolent Corporation* v. *United States, supra,* from the case at bar on the grounds that (a) there, the bonds were not the direct obligation of the City of American Falls, whereas, here, the People of Puerto Rico pledged its good faith that the bonds would be paid, and (b) there, all the assessments made pursuant to the original ordinance had been fully paid or discharged, and that in order to provide for the payment of the deficiency in the original assessment a new ordinance was required, whereas here, all the taxes and assessments falling due in the future were the result of the original legislative action taken by the People of Puerto Rico prior to the institution of these condemnation proceedings. Granted that the differences pointed out by the People of Puerto Rico exist, nevertheless, they do not constitute a sufficient basis for deviating from the holding of the court in that case."

"*The judgment of the District Court is affirmed.*

"MAGRUDER, J., heard the argument but through absence was unable to participate in the decision of this case."

The court also discusses a supposed "shift" by The People of Puerto Rico, in the District Court, by its "Statement of Particulars" (R. 23-29), and "Stipulation" (R. 29-34) of February 28, 1942, from the position taken in its original answer of April 5, 1940 (R. 9-12), with relation to the basis of its claim for compensation for the so-called "Financial Items" representing the loss caused it by the federal government's taking a substantial part of the lands within the irrigation district, in addition to the tangible loss represented by the value of those parts of the insular government's own ditches, flumes, pipes, etc., located within the lands thus taken. But the Circuit Court

of Appeals itself recognizes that the District Court did not consider that there was any essential change or "shift" in the fundamental basis of the insular government's claim. It says (R. 62, 134 F. (2d) at p. 270):

> "In view of the fact that the lower court assumed by its discussion of the issue that The People of Puerto Rico did not abandon its claim of compensation for the right to make future assessments, we shall hereafter give it consideration." [5]

There is no "shift" in the underlying basis of the insular government's claim; but, as noted above, only in the suggestions of the *method of calculating the damages.* There is nothing in the record in the District Court or in its opinion or order indicating that, in that court, either the parties or the court itself considered that there was any essential change or "shift" in the essential basis of the insular government's claim.

The *measure of the damages* is really immaterial here, inasmuch as the lower courts have wholly denied petitioner's right to any compensation whatever for the "Financial Items". Whatever the proper measure, or method of the calculation, should be, the damages should be calculated and measured and allowed by the District Court; and this case should be remanded to that court for this purpose. [See *infra,* pp. 22-23, and Supporting Brief, pp. 49-50].

GIST OF THE LOWER COURTS' OPINIONS

The lower courts' reasons for denying the compensation for the "Financial Items" asked by the insular government here really boil down primarily to those stated in the above-quoted paragraph of the District Court's opinion (R. 49; *ante* pp. 8-9), that is to say that the insular government's damages suffered by reason of the United States

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[5] Apparently the Circuit Court of Appeals has misunderstood,—or unduly emphasized the effect of,—the phrase *"additional compensation by the United States"* as used in the Stipulation (R. 33, *supra*).

taking away the 592 acres[6] of lands from the irrigation district, and also taking and destroying those portions of the insular government's distribution system of its Irrigation Service located within the boundaries of the area so taken over,—and thus breaking into and injuring the Irrigation Service as an integrated whole,—and also thus depriving the insular government of the revenues accruing to it from the irrigation assessments from the lands within that area, for its trust fund for the amortization of its irrigation bonds and the maintenance and operation of the irrigation system,—"is a type of consequential damage not compensable"; is "like the loss of bondholders upon condemnation by the United States of lands to which they look for assessments to pay the bonds, which type of loss has been held to be non-compensable"; that such damages are "too speculative"; that they "are really anticipated future profits from loss of business and are clearly not compensable under the authorities".

PETITIONER'S POSITION: ERRORS OF THE LOWER COURTS

1. Both of the lower courts appear to have misunderstood the insular government's position,—although in somewhat different ways. The District Court thought that the insular government was somehow asking double compensation (*Opinion*, R. 50); and the Circuit Court of Appeals seems to have been under the impression that it had attempted, in the District Court, and there, to "shift" the essential basis of its original claim. [See *ante*, pp. 12-13.]

2. *But the District Court's opinion overlooks,*—as does also, in effect, that of the Circuit Court of Appeals,—the radical difference between all the authorities it cites, and

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[6] In this case; and 703 acres more in the companion case of *Pedro Hernandez Almeida, et als.* (R. 50; *ante* Footnote 3, p. 6).

the case here. In all the cases cited in the District Court's opinion, and in all other cases that have come to our attention where damages somewhat similar to those here involved, actually suffered, were considered "too speculative", or as being in the nature of loss of "anticipated profits", examination of the underlying facts shows that the organization damaged *had held no contractual* (or *quasi*-contractual *legal right or duty* to continue to operate its system as an integrated whole, or to continue to collect the payments of which it was thus deprived,—whether from land owners within irrigated districts, customers of telephone companies, or whomsoever they may have been.

3. But in the present case the insular government, by express provision of the Organic Act of Congress (Sec. 3; Appendix, *infra*, pp. 55-56) *did have the legal power*,—and by the provisions of the Acts of the Legislature itself, Nos. 59 and 63 of 1919 and the amendatory and supplemental Acts (Appendix, *infra*, pp. 56 *et seq.*),—*and the assent of the landholders in the irrigated district, under Section 4 of Act No. 63 of 1919* (Appendix, *infra*, p. 62),—*did have the legal duty as well as the legal power, as trustee for the bondholders and for all of the land owners within the irrigated district, as well as for the protection of its own Treasury* under its pledge behind the bonds of "the good faith of The People of Puerto Rico" "hereby irrevocably pledged" (Sec. 8, Act No. 59),—to continue to operate its Irrigation Service as an integrated whole, as it had stood before it was broken into by the federal government in these proceedings,—and able to continue to levy and to collect the assessments and the special taxes, and out of their proceeds to continue to defray the expenses of the maintenance and operation of the irrigation system, and to amortize the bonds.

4. "Just compensation" in condemnation proceedings includes compensation not only for the value of that part of a property [such as here an integrated irrigation system] actually taken [such as here those parts of the distribution

ditches, flumes, pipes, etc. lying within the portions of the lands within the irrigation district which were actually taken over by the United States], but also for any damage or deterioration of earning power or ability to carry out the purpose of the integrated system sustained by the remaining portion of the property not actually taken, by reason of the taking away of a part of the original system through the condemnation proceedings.

5. This court said in *United States* v. *Grizzard*, 219 U. S. 180, 183-184:

> "Whenever there has been an actual physical taking of a part of a distinct tract of land, the compensation to be awarded includes not only the market value of that part of the tract appropriated, but the damage to the remainder resulting from that taking, embracing, of course, injury due to the use to which the part appropriated is to be devoted. * * *
>
> "The constitutional limitation upon the power of eminent domain possessed by the United states is that 'private property shall not be taken for public use without just compensation.' The 'just compensation' thus guaranteed obviously requires that the recompense to the owner for the loss caused to him by the taking of a part of a parcel, or single tract of land, shall be measured by the loss resulting to him from the appropriation."

6. This is well established. See also: *United States* v. *C. B. & Q. R. Co.*, 82 F (2d) 131, 134-137 [Eighth Circuit; *certiorari denied*, 298 U. S. 689]; *United States* v. *C. B. & Q. R. Co.* 90 F (2d) 161, 168 [Seventh Circuit; *certiorari denied*, 302 U. S. 714]; *United States* v. *Wheeler Township*, 66 F. (2d) 977, 984-985 [Eighth Circuit]; *Town of Bedford* v. *United States*, 23 F. (2d) 453, 454-457 [First Circuit]; *United States* v. *Miller*, 317 U. S. 369, 376; *United States* v. *Welch*, 217 U. S., 333; *Monongahela Nav. Co.* v. *United States*, 148 U. S. 312, 328-330, 341-345; *Cooley Constitutional Limitations*, pp. 565-566; *Lewis Eminent Domain* (3rd Ed.), Secs. 868, 710. *Confer; Sharp* v. *United States*,

191 U. S. 341, 350-357; *United States* v. *New River Collieries*, 262 U. S. 341, 343.

7. In the present case, the insular government had established a rather extensive irrigation system in the western part of the Island,

> "for the district situated approximately between the Guajataca river on the East and the town of Aguadilla on the West, including the irrigable lands in the municipalities of Isabela, Moca and Aguadilla" (Sec. 1, Act No. 63 of 1919; Appendix, *infra*, p. 61).

This Court will take judicial notice of the geography of the Island. The irrigation system of course includes means for gathering the water at its sources in the higher mountains or hills by dams and intakes, and for bringing it down by flumes and pipes to the lower ground and there distributing it to the lands to be irrigated in the irrigation district, and also includes pumping plants and electric light and power plants as contemplated in the original and amendatory Acts.[7] The revenues of the Irrigation Service for the repayment of the cost of the construction of the entire system [amortization of the bonds], and for the maintenance and operation of the system, must, of course, come wholly from the water delivered to the irrigated lands by the distribution pipes and ditches in the lower end of the system [except insofar as revenue may be derived from the sale of electric power generated at the power plants]. Yet

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[7] *Confer* Sec. 3, Original Act No. 63 of 1919; Appendix, *infra*, p. 62:

> "The proceeds of the sale of the bonds and all moneys accruing by reason of assessments of taxes and sale of water and power within the temporary and permanent irrigation districts * * * shall * * * be deposited in the Treasury of Porto Rico in a trust fund * * * 'Isabela Irrigation Fund'."

the upper parts of the system devoted to the gathering of the water in the higher levels, and to bringing it down to the lower levels where it is made available for distribution, are nevertheless just as important, and just as costly,—or costlier,—than the distribution pipes and ditches located on the lower levels on the irrigated lands themselves,—although the upper works are not capable, by themselves, of producing any revenue, but serve only to gather the water and to bring it down to the places where it can be made to serve its purpose and to produce revenue.

8. It is plain, therefore, that in order to provide for the reimbursement of the costs of the construction of the whole system and of its continued maintenance and operation, it was necessary to make the irrigated lands benefited by it responsible and liable, not only for the cost of the distribution equipment—flumes, pipes, ditches, gates, etc.,—actually located on those lands, but also, equally, for their respective proportionate shares of the cost of constructing, maintaining and operating the upper works by which the water was gathered and brought down to the land. And that purpose was accomplished by the provisions of Acts Nos. 59 and 63 of 1919, and the amendatory and supplemental Acts,—the Acts under which the bonds were sold and the money was thus realized for the construction of the system,—and under which the system was built.

9. Therefore, when in these condemnation proceedings the federal government took over a substantial portion of the irrigated lands at the lower end of the system, the damage directly and necessarily resulting to the system as an integrated whole,—and to the insular government as its owner as trustee for all of the land-owners within the entire district, and for the bond-holders, and in its capacity as guarantor of the bonds for which its own good faith had been irrevocably pledged,—was twofold: (1) Its immediate loss of the distribution equipment which it had placed, and owned, upon the particular lands taken over by the federal government;[8] and more importantly, (2) Its loss

of the benefit the use of a proportionate part of the means which it had provided for furnishing the water to the lower distribution systems and thereby of performing the functions for which the Irrigation Service was organized, and, in so doing, of producing revenue for reimbursing the cost of the construction and of defraying the expenses of the upkeep and maintenance of the upper works,—of all those portions of the system devoted to the gathering of the water and bringing it down to the irrigated lands,—those portions which do not in themselves immediately produce revenue.[9] The computation of this loss constitutes the so-called "Financial Items" in petitioner's claim here (R. 12, 23-24; *ante*, pp. 12-13).

10. **It follows that the District Court was plainly in error** in holding that the insular government's damages to the irrigation system were fully compensated (R. 49-50) by paying it "the fair value of the distribution system located on the lands taken", including "the cost new of the construction of the 13,000 foot reinforced concrete pipe along the Eastern boundary of the lands taken, to connect the several canal",[10] and that:

> "Claimant would not have been entitled to greater compensation than that; *as to said part of its distribution system it has been made whole.*" (*Italics supplied*)

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[8] The "Tangible Items" $64,393.07 allowed without question by the federal government and directed paid by the District Court (R. 10--11, 17-18, 21-22).

[9] It is manifest that, **by way of illustration**, the federal government might conceivably have taken over all of the irrigated lands themselves, without taking the upper works, and thus have left the insular government no means whatever [except from sales of electric light or power] for reimbursing the cost of all the upper works,—or for amortizing the bonds,—except insofar as the repayment of the cost of the distribution equipment located on the irrigated lands might extend.

[10] Simply to connect, as the court states, parts of the canal directly severed from each other by the taking of these 592 acres of land by the United States, so as to lead the water in

11. The proportionate deprivation of the means of carrying on the functions for which the integrated system had been constructed, and thereby of repaying the cost of the construction and of the upkeep and maintenance of those portions of the irrigation system which we have called the upper works, is just as much a direct loss to the insular government,—and the deprivation of it is just as much a "taking" by the federal government, for which "just compensation" is required by the Constitution, as is the taking of the local distribution equipment located within the irrigated lands themselves. It is equally a direct loss to the insular government,—a direct deprivation of its property.

12. Manifestly the insular government had a direct property right not only in these upper works themselves but equally in the means it had provided for carrying on the functions of the entire integrated system, and for amortizing the cost. It had built the works of adequate size and capacity to serve the entire system, and had issued bonds on the whole system, covering the entire cost, upon which in accordance with the powers given it by the Congress in the Organic Act it had made itself personally liable, and had irrevocably pledged the good faith of The People of Puerto Rico. It had made the lands within the irrigated district liable for the repayment of the bonds, and had made the various parcels of lands as among themselves [or the land owners] proportionately responsible for their proportionate shares. It had provided the means for annual collection of the assessments in such fashion that, as the Circuit Court of Appeals itself says in its opinion, the duty of the Treasurer to make the collections became "purely ministerial" (R. 66); and it had made the provision for the payments "a con-

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a new course around, and outside of, the new military reservation. This has nothing whatever to do with reimbursing the cost of the upper works of the irrigation system, something entirely outside of the distribution equipment which had been located on the lands taken by the federal government.

tinuous appropriation", so that "no further appropriation for such purpose shall be required." (Sec. 8, Act. No. 59 of 1919).

13. Whether or not those provisions constituted, technically, the creation of an immediate continuing lien on the lands, yet in any event they did constitute *a direct contractual liability,* on the part both of the landholders and of the insular government itself as trustee and guarantor, to make and to collect the payments and to pay off the bonds. The means thus provided for these payments constituted *contractual obligations,*—or *quasi*-contractual obligations,—mutually binding upon the bondholders, the landholders, and the lands themselves within the irrigation district, and upon the insular government. The federal government's breaking into those contractual obligations by taking away a substantial portion of the irrigated lands, and thereby preventing the assessments from those lands from being applied for their proportionate parts of those obligations, was therefore a "taking" of property, for which, as above stated, under the Constitution, "just compensation" should be made.

14. Remembering that the relationship of the insular Legislature to the Congress, and to the federal government, is substantially like that of city council to a State legislature and to the state government, it may be said that these provisions were analagous to a franchise granted by a city council to cover the costs of amortizing bonds of a city water system or other public utility. But whether considered in the light of a franchise, or of a lien, or simply of a contractual obligation, these contracts constituted *property* and property rights in the insular government for its own benefit and, as said above, as trustee also, both for the bondholders and for the owners of the lands in the other parts of the irrigated district, who should not be compelled by the taking away by the federal government of these particular lands to pay a greater proportion of the costs of the upper works than they would otherwise have been required to pay.

15. That such contract rights and obligations constitute

property, which cannot be taken without just compensation being made for it, is illustrated, for example, by the decisions in tort cases allowing recovery for damages against a third party who wrongly influences a party to a contract to refuse to carry out his contract obligations. Such cases as *Angle* vs. *C. St. P. & O. R. Co.*, 151 U. S. 1, 10-27; *Lewis* vs. *Bloede*, 202 Fed. 7; *Morgan* vs. *Andrews*, 107 Mich. 33; *Lamb* vs. *Cheney*, 227 N. Y. 418; *Campbell* vs. *Gates*, 236 N. Y. 457; *Hornstein* vs. *Pudwitz*, 254 N. Y. 443; *Reiner* vs. *No. Am. Newspaper Alliance*, 259 N. Y. 250, 254; and others of that category in different jurisdictions, rest upon recognition of the fact that *contract obligations constitute property* which may not be interfered with,—[and we submit, *a fortiori*, may not be directly taken away in condemnation proceedings],—without making just compensation.

16. The decision of this court in *Mullen Benevolent Corp.* v. *United States*, 290 U. S. 89, upon which the Circuit Court of Appeals relies (R. 67-68), as did likewise the District Court (R.49), *is not to the contrary;* but rather supports the position of The People of Puerto Rico in the present case. The Circuit Court, as well as the District Court, as it is believed, misunderstood and misapplied the decision of this Court in that case. [See as to this, Supporting Brief, *infra*, Point XI, pp. 40-46.]

17. The individual landholders within the irrigation district are still parties to these condemnation proceedings, [Circuit Court's opinion, R. 64-65],[11] and the District Court should have proceeded to determine the amounts to be charged against their respective shares of the award, in

[11] The award has not been distributed, and the landowners within the irrigated district are still parties to the proceedings, subject to the jurisdiction of the court [R. 18-19, and Exhibits "IV" and "VII"; R. 19-21],—the "Disclaimer" filed by The People of Puerto Rico on January 14, 1942, having released only those landowners *outside of the irrigated district*, against whom The People had no claims of any kind, but not those within the district, who remain parties to the case.

release or satisfaction of, and in payment of, their shares of the "just compensation" to The People of Puerto Rico, for the present worth or present value of the liabilities of their irrigated lands for the reimbursement of the cost of building and of the maintenance and operation of the entire irrigated system for which the insular government, and the remaining landholders within the entire district, remain irrevocably bound to the bondholders,—the entire system, as an integrated whole. [See Question "3", under "Questions Presented," *ante,* pp. 3-5].

STATUTES

Constitutional and federal and insular statutory provisions chiefly involved are in the Appendix (*infra,* pp. 55-101).

REASONS FOR GRANTING THE WRIT

This case presents an important question of federal law of wide general interest, especially to the insular government and to the people of Puerto Rico, as well as to other States and municipalities possessing irrigation systems and similar undertakings with bonds outstanding to amortize the cost, in view particularly of the increasing number of federal condemnation proceedings. It is believed that the lower courts, the Circuit Court of Appeals as well as the District Court, have decided this case in a way that is in conflict with applicable decisions of this Court, particularly with *United States* v. *Grizzard, supra,* 219 U. S. 180, 183-184; *United States* v. *Miller,* 317 U. S. 369, 376; *United States* v. *Welch,* 217 U. S. 333; and *Monongahela Navigation Co.* v. *United States,* 148 U. S. 312, 325, 328-330; and have misunderstood and misinterpreted and misapplied this Court's decision in *John K. and C. Mullen Benevolent Corporation* v. *United States,* 290 U. S. 89; and that the decision of the Circuit Court of Appeals, as well as that of the District Court in this case, is in conflict also with decisions of other Circuit Courts of Appeals, particularly with those of the Eight Circuit in *United States* v. *C. B & Q. R. Co.,* 82 F (2d) 131, 134-137, and of the Seventh Circuit in